

1982 S.C. Op. Atty. Gen. 36 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-34, 1982 WL 155004

Office of the Attorney General

State of South Carolina

Opinion No. 82-34

May 19, 1982

***1 SUBJECT: Taxation, Sales Tax Exemption, Preprints.**

Preprints do not qualify as 'newspapers', within the meaning of § 12-35-550(7), and thus are not exempt from sales tax.

To: Mr. Cyril C. McCrary
Director
Sales and Use Tax Division

QUESTION:

Do preprints qualify as 'newspapers', within the meaning of § 12-35-550(7), so that they are exempt from sales tax?

STATUTES:

South Carolina Code of Laws (1976), as amended, § 12-35-550(7) and Tax Commission [Regulation § 117-174.166](#).

DISCUSSION:

A preprint is a euphemism for the familiar advertising supplement which is inserted into newspapers and advertises the merchandise of a retailer. Generally, a retailer will contract with a printer to produce preprints advertising its merchandise. The retailer then contracts with newspaper publishers for the purpose of inserting the preprints into the newspaper. It uses the circulation of the newspaper as a distribution vehicle for its advertising supplement.

Section 12-35-550(7) provides that the sales tax shall not apply to 'the gross proceeds of the sale of * * * newspapers'. In construing an exemption, the Supreme Court of South Carolina has consistently held that such exemptions are to be strictly applied against the allowance of an exemption and in favor of the tax. See [M. B. Kahn Const. Co. v. Crain](#), 222 S.C. 17, 71 S.E. 2d 503 (1952); 1963-64 OAG No. 1645, p. 79.

Tax Commission [Regulation 117-174.166](#) sets forth criteria that must be met by a publication before it qualifies as a newspaper. At the time the preprints are printed and delivered by the printer they conspicuously fail to satisfy at least the following requirements of the Commission's Regulation:

- '2. It (publication) must be published at stated short intervals—daily or weekly.
3. It (publication) must contain news of general interest and intelligence of current events.'

The preprints are not prepared at stated short intervals and since they consist entirely of one retailer's advertising, their appeal goes no further than a select group of consumers interested in purchasing the merchandise of a particular retailer. Since failure to meet any one of the requirements of the regulation prohibits a publication from qualifying as a newspaper, no further analysis is deemed warranted.

It has been argued that a newspaper preprint incorporated into and distributed with a newspaper is an integral of the newspaper and therefore falls within the exemption offered such. See Friedman's Express v. Mirror Transportation Co., 71 F. Supp. 997 (D.N.J. 1947), *aff'd.*, 169 F. 2d 504 (3d cir. 1948). The Court in Friedman, decided that a comic supplement fell within the definition of newspaper since it was an integral part of the newspaper because it assumed the character of the journal of which it was a part, and it did not lose its character when it was not in company with the other sections though destined for no other purpose than union with such other component parts of the total bulk, which later became known as a newspaper. In Sears Roebuck & Co. v. State Tax Commission, 370 Mass. 127, 345 N.E. 2d 893 (1976), the reasoning of Friedman was used to include preprints within the definition of 'newspaper' in a sales tax exemption statute.

*2 However, in a well-reasoned opinion of the Connecticut Supreme Court, Caldor, Inc. et al. v. Gerald J. Hefferman, 183 Conn. — (42 Conn. L.J. No. 43, p. 6) (1981), the Court set forth the following two reasons why Sears should not be followed: 'The first, and most important, concerns the identity of the parties at the time of the taxable event, i. e., when the ownership of the preprints passes from the printer to the retailer. The only parties in privity to the contract providing for the printing and delivery of the preprints are the retailer and the printer. The newspaper publisher has no enforceable interest at the time of the taxable event which, therefore, precludes any argument that the preprints are an integral part of the journal published by the newspaper company. In Friedman's Express v. Mirror Transportation Co., privity of contract existed between the printer of the comic sections and the newspaper publisher. Second, there is a difference, not recognized by the Massachusetts Supreme Court, between supplemental advertising preprints and the comic sections. The preprint supplement is prepared by an entity totally independent of the publisher and is not made a part of the newspaper at short, regular intervals. It is inserted into the newspaper, not as an integral part designed to capture a regular audience, but rather to make use of the newspaper's extensive distribution systems. * * *. An advertising supplement, inserted into the newspaper at irregular intervals, is not like a member of the family of sections making up the newspaper, but is more similar to the occasional house guest. * * *.'

The wisdom of the Caldor decision was recognized and followed in Ragland v. K-Mart Corp., 624, S.W. 2d 430, where the court acknowledged the Friedman and Sears decisions, but declined to rely on them.

Thus, preprints do not exhibit the characteristics of a newspaper per Commission's [Regulation 117-174.166](#) at the time they are printed and delivered by the printer. Nor do they assume the character of the edition into which they are inserted. Hence, a preprint does not fall within the criteria of a newspaper pursuant to § 12-35-550(7).

CONCLUSION:

Preprints do not qualify as 'newspapers', within the meaning of § 12-35-550(7) and thus are not exempt from sales tax.

Harry T. Cooper, Jr.
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